

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ROBERT PAIGE LEE,	)	
	)	
Petitioner,	)	
	)	
v.	)	1:13CV108
	)	1:09CR382-1
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	

RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE

Petitioner, a federal prisoner, has submitted a Motion [Doc. #36] to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. However, it appears that Petitioner was convicted and sentenced in the United States District Court for the Eastern District of North Carolina. In his Motion, Petitioner seeks to attack the underlying conviction in his case. Therefore, he must pursue his motion under § 2255 in the district of conviction. See 28 U.S.C. § 2255(a) (providing that a petitioner “may move the court which imposed the sentence to vacate, set aside or correct the sentence”).<sup>1</sup> Therefore, in the interests of justice, this matter should be transferred to the United States District Court for the Eastern District of North Carolina for further proceedings. See 28 U.S.C. § 1631.

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<sup>1</sup> Petitioner’s case was previously transferred to this District, but only for supervision of Petitioner while on supervised release pursuant to 18 U.S.C. § 3605. Cf. Napoles v. United States, 536 F.2d 722, 724 (7th Cir. 1976) (holding that the proper forum for a § 2255 motion challenging an underlying conviction was in the original sentencing court, even after a transfer of probation, since the § 2255 motion should be heard in the “court whose proceedings are being attacked”); Anthony v. United States, Nos. CV-18-19-E-BLW, CR01-65-E-BLW, 2008 WL 190636 (D. Idaho January 18, 2008) (holding that transfer of jurisdiction of supervised release did not include jurisdiction to hear a § 2255 motion challenging the original sentence). To the extent that a Petition for Violation of Supervised Release has been filed in this District, the Court notes that further proceedings on that Petition have been stayed by agreement of the parties in light of the issues raised in the § 2255 Motion. Within thirty (30) days of any final determination in the Eastern District of North Carolina, the Government should update this Court as to its intent regarding the pending Violation Petition.

IT IS THEREFORE RECOMMENDED that this action be filed and that the record of this proceeding be transferred to the United States District Court for the Eastern District of North Carolina for further screening and/or further proceedings.

This, the 30th day of April, 2013.

/s/ Joi Elizabeth Peake  
United States Magistrate Judge